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IN THE COURT OF APPEALS OF INDIANA

CAROLYN WALTZ,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0608-CR-630
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robert R. Altice, Judge
Cause No. 49G02-0505-FC-88196

April 13, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Carolyn Waltz appeals the trial court's revocation of her probation and raises two issues, which we consolidate and restate as whether the trial court erred in revoking Waltz's probation.

We affirm.

FACTS AND PROCEDURAL HISTORY

On May 31, 2006, Waltz pled guilty to theft,[1] a Class D felony. Pursuant to a written plea agreement, the State agreed to dismiss three counts of credit card fraud and two counts of forgery, and to cap any period of incarceration to two years in exchange for Waltz's plea. The trial court sentenced Waltz to 545 days, all of it suspended, and 365 days on probation. It was a condition of Waltz's probation that she "refrain from all use of alcohol and controlled substances and submit to drug or alcohol-sensor testing." *Appellant's App.* at 35. Four days later, on Sunday, June 4, 2006, Waltz was arrested for disorderly conduct. The judge at Arrestee Processing Center ("APC") released Waltz on her own recognizance and ordered her to report to her probation officer for a urine drug screen on June 5, 2006 by 12:00 p.m.

On June 8, 2006, the Marion County Superior Court Probation Department ("probation department") filed a Notice of Probation Violation, alleging that Waltz was arrested for disorderly conduct and "failed to report from APC on 06-05-06 by 12:00pm as ordered by Judge Flowers." *Id.* at 36. The trial court held an initial hearing on June 21, 2006, and a probation revocation hearing on July 7, 2006. At the hearing, Officer Ken Cissell of the Indianapolis Police Department testified that he was flagged down by an

individual and alerted to a domestic disturbance. As Officer Cissell approached the scene of the disturbance, he could hear Waltz inside her house yelling expletives at her boyfriend, Paul, who was standing on her porch with his brother. After noticing a small bonfire of clothes in the back yard, Officer Cissell knocked on Waltz's door.[2] A few minutes later, Waltz answered the door, and Officer Cissell instructed her to quiet down. Waltz initially calmed down, and Officer Cissell went to the back yard to take care of the fire. Paul again tried to enter Waltz's house, which caused her to start yelling a second time. Again, Officer Cissell instructed Waltz to settle down, and, again, she cooperated. While Officer Cissell waited for the fire department to arrive, Waltz began yelling a third time. Officer Cissell testified that, this time, Waltz continued to yell, so he arrested her for disorderly conduct. *Tr*. at 19-20. Waltz was released from APC on her own recognizance and was ordered to report the next day to her probation officer for a urine drug screen.

Waltz testified that she made five attempts, via telephone, to contact her probation officer by the required June 5, 2006 deadline, but that a man at the probation department informed her not to go anywhere until she spoke with her probation officer, Brooke. Waltz further testified that Brooke did not call her back until June 7 and told her to come into the office the next day. Sara Bunner, a representative of the probation department, testified that Waltz did not appear on Monday, June 5, but instead, appeared for the first time four days later on Friday, June 8, 2006. In response to the State's questioning, Waltz confirmed that

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[1] *See* IC 35-43-4-2.

[2] The burning pile of clothes belonged to Paul, who stated that Waltz had set his clothes afire during their argument. Waltz stated that Paul set the clothes on fire. At the probation revocation hearing, the trial court did not have to settle this question of fact.

she was directed to "go" to the probation department, not just to call. *Id.* at 26. Bunner opined that if Waltz had appeared as ordered on June 5, the probation department would not have turned her away. *Id*. at 14.

Based on the evidence presented, the trial court made the following determination:

> Well, as I read disorderly conduct, as 35-45-1-3, "A person who recklessly, knowingly, or intentionally, one, engages in fighting or tumultuous conduct. Two, makes unreasonable noise and continues to do so after being asked to stop,["] which I think there is evidence here for the Court to find by a preponderance of the evidence that she has, in fact, committed the crime of disorderly conduct. So – plus, you couple that with her failure to report to APC after she has been arrested on this and – and so the Court's going to find that she's violated the terms and conditions of her probation. One, the Court finds by preponderance of the evidence that she did commit the crime of disorderly conduct. And two, when she failed to report to APC on June 5th by twelve o'clock as ordered after this arrest. And just so the record's clear, she was released, asked to report to probation. She didn't report until three days later, by the testimony that I received of Ms. Bunner. So Court's going to revoke her probation . . . .[3]

Id. at 23-24. Following the revocation of her probation, the trial court ordered Waltz to serve 545 days in the Department of Correction. Waltz now appeals the revocation of her probation.

DISCUSSION AND DECISION

Waltz argues that the trial court erred in revoking her probation. Specifically, Waltz contends that there was insufficient evidence: (1) that she committed the crime of disorderly conduct; and (2) that she failed to comply with the APC order to report to the probation department on June 5, 2006 for a urine drug screen. We review a trial court's decision to

revoke probation for an abuse of discretion. *Whatley v. State*, 847 N.E.2d 1007, 1009 (Ind. Ct. App. 2006); *Rosa v. State*, 832 N.E.2d 1119, 1121 (Ind. Ct. App. 2005). "'An abuse of discretion occurs if the decision is against the logic and effect of the facts and circumstances before the court.'" *Id*. (quoting *Rosa*, 832 N.E.2d at 1121).

A probation revocation hearing is in the nature of a civil proceeding. *Whatley*, 847 N.E.2d at 1010; *Marsh v. State*, 818 N.E.2d 143, 148 (Ind. Ct. App. 2004). Therefore, an alleged violation of probation only has to be proven by a preponderance of the evidence. *Whatley*, 847 N.E.2d at 1010. When we review the determination that a probation violation has occurred, we neither reweigh the evidence nor reassess witness credibility. *Id*. "'Instead, we look at the evidence most favorable to the probation court's judgment and determine whether there is substantial evidence of probative value supporting revocation. If so, we will affirm.'" *Id*. (quoting *Marsh*, 818 N.E.2d at 148). When, as here, the alleged probation violation is, in part, the commission of a new crime, the State does not need to show that the probationer was convicted of a new crime. *Whatley*, 847 N.E.2d at 1010; *Richeson v. State*, 648 N.E.2d 384, 389 (Ind. Ct. App. 1995), *trans. denied*. The trial court need only find that there was probable cause to believe that the defendant violated a criminal law. *Whatley*, 847 N.E.2d at 1010.

Waltz first contends that the trial court erred in finding by a preponderance of evidence that there was probable cause to support disorderly conduct. She offers that IC 35-

[3] The trial court repeatedly, and mistakenly, referred to Waltz having to report "to" APC. However, it is clear from the following language that the trial court understood that she was required to report to the probation department: "And just so the record's clear, she was released, asked to report to probation." *Tr*. at 23-24.

45-1-3 was adopted to provide relief to people whose privacy or use and enjoyment of land has been intolerably impaired by noise that was unwelcome and unreasonable under the circumstances. *Appellant's Br.* at 8. Waltz contends that there was insufficient evidence of the surrounding circumstances and that no one other than Officer Cissell was bothered by her yelling. *Id*. at 9.

The State recognizes that, pursuant to IC 35-45-1-3, it is a Class B misdemeanor for a person to make unreasonable noise and to continue to do so after being asked to stop.[4] To "sustain a conviction for disorderly conduct [under IC 35-45-1-3], the State must prove that the 'complained of speech infringed upon the right to peace and tranquility of others.'" *Appellee's Br.* at 6 (quoting *Hook v. State*, 660 N.E.2d 1076, 1077 (Ind. Ct. App. 1996), *trans. denied*). Here, Officer Cissell testified that he was "flagged down about a domestic disturbance" by an individual who reported yelling coming from Waltz's home. *Tr*. at 18; *State's Ex*. 1. Officer Cissell stated that, upon approaching the scene of the disturbance, he could hear yelling coming from inside the home. *Tr*. at 18. The yelling burst out not once, but three times. It was not against the logic and effect of the facts and circumstances before the trial court for the judge to conclude that the yelling was infringing on the tranquility of the bystander who reported the yelling and on others who heard the noise. The State did not have to prove the crime of disorderly conduct beyond a reasonable doubt, but only that there was probable cause to believe that Waltz violated a criminal law. *Whatley*, 847 N.E.2d at

[4] While the State inadvertently cites to IC 35-34-1-3, *Appellee's Br.* at 6, it is clear that the intended code cite is IC 35-45-1-3.

1010. There was sufficient evidence for the trial court to find probable cause to believe Waltz committed the crime of disorderly conduct.

Waltz also contends that the trial court erred in finding that she violated her probation by failing to report to the probation department by June 5, 2005, as ordered by the APC. Specifically, she contends that there was insufficient evidence that she violated the APC order. Waltz first contends that the APC order to appear on June 5 was not a condition of her probation and that failing to comply could not have violated her probation. Waltz fails to recognize, however, that the APC order was issued to obtain a urine drug screen. Refraining from the use of alcohol and drugs was a condition of her probation. Without that screen, the trial court could not monitor her compliance. Failing to comply with an order necessary to ensure compliance was a violation of her probation.

Waltz next contends that she did everything she reasonably could to comply with the APC's order to report to her probation officer by June 5, 2006—she called, left messages, followed the directions of a person at the probation department who told her not to come in without speaking with her probation officer, and reported to the probation department on June 8 as instructed by her probation officer. *Appellant's Br.* at 11. The State responds that the APC order required Waltz to report for a urine drug screen, which she failed to do. Citing to testimony of probation department representative Bunner, the State notes that, regardless of whether Waltz's probation officer was in the office on June 5, Waltz would have complied with the order by reporting to the probation department by noon on June 5 and by making herself available for a urine drug screen. *Appellee's Br.* at 9

Waltz presented to the trial court the same evidence that she presents to us here. Her argument asks us to reweigh the evidence, which we will not do. *Whatley*, 847 N.E.2d at 1010. Here, Waltz was ordered to appear by noon on June 5, 2006. Although Waltz contends that she was following directions obtained via telephone from the probation department, she does not contest that she failed to physically report to the probation department on June 5 as ordered. There was sufficient evidence for the trial court to find that Waltz failed to report to her probation officer as ordered on June 5, 2006, in violation of her probation.

Affirmed.

RILEY, J., and FRIEDLANDER, J., concur.